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DECLARATION OF SERVICE

On this day I served a copy of the document on which this declaration appears by email transmission to:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Sequim, WA this 5th day of September, 2020.



Erika Hamerquist, Secretary/Tellina Sandaine, Paralegal

OFFICE OF THE HEARING EXAMINER
IN AND FOR THE CITY OF SEQUIM

RE: CDR20-001)
)
Consolidated Administrative Appeals)
of January 24, 2020 Notice of) File No. CDR20-001
Determination of Procedure Type:)
May 15, 2020 Director's Report and) CITY'S RESPONSE TO APPELLANT
Staff Decision; and May 11, 2020) PARKWOOD'S SUPPLEMENTAL
MDNS for Jamestown S'Klallam Tribe) BRIEFING
Outpatient Clinic)
)
)

I. INTRODUCTION AND ARGUMENT

The City submits this Response to Appellant Parkwood's Supplemental Briefing (letter to the Hearing Examiner dated October 2, 2020), in which it joined Save Our Sequim's (S.O.S.) briefing on the City's interim control ordinance. Appellants Parkwood and S.O.S. claim that the

1 court's holding in the *Graham Neighborhood Ass'n v. F.G. Assoc.*, 162 Wn. App. 98 (2011) is
2 "dicta" and need not be followed. The City disagrees with their characterization of that case.

3 In *Graham*, the court noted that the issue of whether Pierce County's vesting ordinance
4 applied to the "cancellation" of a land use permit was not squarely before it but exercised its
5 discretion to rule on the matter as the issue was "dispositive" to its decision on the merits. *Id.* at
6 109-112. Thus, assuming without conceding that the case is "dicta", the case nonetheless is
7 central to the court's holding, which was subsequently denied review by the Washington State
8 Supreme Court. *Id.*; 172 Wn.2d 1024 (2011).

9 Moreover, additional case law also supports the position a land use application does not
10 vest to process. *See also, e.g., Goat Hill Homeowner's Ass'n v. King Cty.*, 686 F.Supp.2d 1130,
11 1135 (2010) (reasonable use exception did not apply to land use application because the
12 regulation was not a "control placed on land use activities..."). Instead, the court reasoned that
13 the reasonable use exception was a "*process* by which such controls may, under specified
14 circumstances, be removed." *Id.*, emphasis added. Similarly, impact fees do not vest to land use
15 applications. *Newcastle Investments v. City of La Center*, 98 Wn. App. 224 (1999) "At its core,
16 a [transportation impact fee] is a fee charged to new development." *Id.* at 232. The court in
17 *Belleau Woods II, LLC v. City of Bellingham*, 150 Wn. App. 228 (2009) agreed.

19 But this court has already decided that impact fees do not affect physical aspects
20 of a development. Therefore, they are not land use control ordinances. The
21 impact fees simply add to the cost of a project, and the vested rights doctrine
does not protect the developer against such additional cost.

22 *Id.* at 238-239.

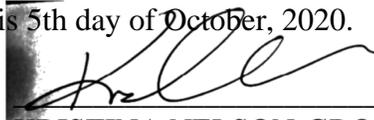
23 Here, at its core the City's ordinance is an ordinance that applies to the *appeals process*
24 and merely serves to identify who hears the appeals; it does not exert "control [placed on land
25

1 use activities". (See, Decl. K. Nelson-Gross re: Supplemental Briefing, Ex. A.) Thus, the
2 Hearing Examiner should reject Appellant Parkwood's (through Appellant S.O.S.) arguments to
3 the contrary.

4
5 II. CONCLUSION

6 The City's Ordinance 2020-009 is a procedural ordinance not subject to vesting laws.
7 The City asks once again for the Hearing Examiner to confirm jurisdiction and issue rulings and
8 decisions on these appeals accordingly.

9
10 RESPECTFULLY SUBMITTED this 5th day of October, 2020.

11 

12 KRISTINA NELSON-GROSS WSBA#42487
13 City Attorney